

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 2051

AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 20-8.1-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) The issuing officer in each **accredited** school ~~corporation~~ **(as described in IC 20-1-1-6(a)(5))** shall be an individual who is:

- (1) a guidance counselor, a school social worker, or (if the attendance officer is a teacher licensed by the state board of education under IC 20-6.1-3) an attendance officer for the school corporation; and
- (2) designated in writing by the ~~superintendent~~ **principal**.

(b) During the times in which the individual described in subsection (a)(1) is not employed ~~in~~ **by** the school ~~corporation~~ or when school is not in session, there shall be an issuing officer available who is a teacher licensed by the state board of education under IC 20-6.1-3, and whose identity and hours of work shall be determined by the ~~superintendent~~ **principal**.

SECTION 2. IC 20-8.1-4-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. (a) This section applies only to occupations for which a child who is fourteen (14) years of age or older and less than eighteen (18) years of age must obtain an employment certificate under this chapter.

(b) **As used in this section, "nonschool week" refers to a week**

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that contains two (2) or less school days.

(c) As used in this section, "school day" refers to a day that contains more than four (4) hours of classroom instruction.

(d) As used in this section, "school week" refers to a week that contains three (3) or more school days.

~~(b)~~ (e) The following apply only to a child who is **at least** fourteen (14) years of age ~~or older~~ and less than sixteen (16) years of age:

(1) The child may not work before 7:00 a.m. or after 7:00 p.m. However, the child may work until 9:00 p.m. from June 1 through Labor Day.

(2) The child may not work:

- (A) more than three (3) hours on a school day;
- (B) more than eighteen (18) hours in a school week;
- (C) more than eight (8) hours on a nonschool day; or
- (D) more than forty (40) hours in a nonschool week.

~~(c)~~ (f) A child who is at least sixteen (16) years of age and less than ~~eighteen (18)~~ **seventeen (17)** years of age may not: ~~work~~:

- (1) **work** for more than eight (8) hours in any one (1) day;
- (2) **work** for more than ~~forty (40)~~ **thirty (30)** hours in any one (1) week;
- (3) **work** for more than six (6) days in any one (1) week; or
- (4) **begin a work day** before 6:00 a.m.

(g) A child who is at least **seventeen (17)** years of age and less than **eighteen (18)** years of age may not:

- (1) **work for more than eight (8) hours in any one (1) day;**
- (2) **work for more than thirty (30) hours in any one (1) week;**
- (3) **work for more than six (6) days in any one (1) week; or**
- (4) **begin a work day before 6:00 a.m. on a school day.**

~~(d)~~ (h) A child who is at least sixteen (16) years of age and less than ~~seventeen (17)~~ **eighteen (18)** years of age may work until 10:00 p.m. on nights that are followed by a school day in any occupation except those which the commissioner of labor determines to be dangerous to life or limb or injurious to health or morals.

~~(e)~~ (i) An employer may employ a child who is at least sixteen (16) years of age and less than seventeen (17) years of age to work until midnight if:

- (1) the work will be performed:
 - (A) ~~while schools are closed for summer vacation; during a nonschool week;~~ or
 - (B) on days that are not followed by a school day; and
- (2) the employer has:
 - (A) obtained written permission from a child's parent **or legal**

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guardian; and

(B) placed the written permission on file in the employer's office.

(j) An employer may employ a child who is at least sixteen (16) years of age and less than eighteen (18) years of age up to forty (40) hours during a school week if the employer has:

(1) obtained written permission from a child's parent or legal guardian; and

(2) placed the written permission on file in the employer's office.

~~(f)~~ **(k)** If an employer has obtained written permission required under subsection ~~(e)~~, **(j)**, the employer may employ a child who is at least sixteen (16) years of age but less than eighteen (18) years of age for periods that do not exceed a total of nine (9) hours in any one (1) day and a total of forty-eight (48) hours in any one (1) **nonschool** week. ~~during summer vacation from school.~~

~~(g)~~ **(l)** A child who is

~~(1)~~ **(1)** seventeen (17) years of age or older but less than eighteen (18) years of age **and**

~~(2)~~ **(2)** a student in grades 9 through 12;

may work until 11:30 p.m. on nights that are followed by a school day **if the employer has obtained written permission from the child's parent or legal guardian and placed the permission on file in the employer's office.** A child covered by this subsection may work ~~later than 11:30 p.m. on nights followed by a school day~~ **until 1 a.m. the following day** if the employer has obtained written permission from the child's parent **or legal guardian** and placed the permission on file in the employer's office. However, the nights followed by a school day on which a child works ~~later than 11:30 p.m. until 1 a.m. the following day~~ may not be consecutive and may not exceed two (2) nights per week.

~~(h)~~ **(m)** Children who are sixteen (16) years of age or older and less than eighteen (18) years of age may be employed the same daily and weekly hours and at the same times of day as adults if they fit into any one (1) of the following categories:

(1) They are a high school graduate.

(2) They have completed an approved vocational or special education program.

(3) They are not enrolled in a regular school term.

SECTION 3. IC 20-8.1-4-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 23. (a) Every person, firm, corporation, or company which employs any child who is fourteen

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(14) years of age or older and less than eighteen (18) years of age in an occupation for which the child must obtain an employment certificate shall post and keep posted, in a conspicuous place or in places where notices to employees are customarily posted, a printed notice. This notice shall state:

- (1) the maximum number of hours these children may be employed or permitted to work in each day of the week; **and**
- (2) the hours of beginning and ending each day. **and**
- (3) ~~the names and ages of the children employed there.~~

The printed forms for this notice shall be furnished by the department of labor.

(b) The employment of children for a longer time on any day than is stated in the notice is a violation of this chapter.

SECTION 4. IC 20-8.1-4-30 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 30. ~~(Application)~~ This chapter applies to all persons under the age of eighteen (18) years who are employed or are seeking employment in Indiana. A person under eighteen (18) years of age who is a resident of Indiana and who requires an employment certificate shall obtain it from the issuing officers of the **accredited school corporation in which such (as described in IC 20-1-1-6(a)(5)) that the person resides.** ~~attends. If a resident of Indiana under eighteen (18) years of age who does not attend an accredited school requires an employment certificate, the person shall obtain the certificate from an issuing officer of the school corporation in which the person resides or from an issuing officer (as described in section 4 of this chapter) designated by the school corporation in which the person resides.~~ A person under eighteen (18) years of age who is not a resident of Indiana and who requires an employment certificate to work in Indiana shall obtain it from the issuing officer of the school corporation in which such person is employed or is seeking employment. However, the judge of a court with juvenile jurisdiction may suspend the application of this chapter in cases involving juvenile delinquents or incorrigibles whenever, in ~~his judgment, the opinion of the judge,~~ the welfare of any child warrants this action.

SECTION 5. IC 20-8.1-4-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 31. (a) A person, firm, limited liability company, or corporation that violates this chapter may be assessed the following civil penalties by the department of labor:

- (1) For an employment certificate violation under section 1 or 13 of this chapter, the following:
 - (A) A warning letter for any violations identified during an



initial inspection.

(B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for ~~each~~ **a second** violation identified in a subsequent inspection.

(C) ~~One hundred~~ **Seventy-five** dollars ~~(\$100)~~ **(\$75)** per instance for ~~subsequent violations~~ **a third violation** that

(i) ~~are~~ **is** identified in ~~an~~ **a** subsequent inspection. subsequent to the inspection under clause (B); and

(ii) occur not more than two (2) years after a prior violation.

(D) **One hundred dollars (\$100) per instance for a fourth or subsequent violation that:**

(i) **is identified in an inspection subsequent to the inspection under clause (C); and**

(ii) **occurs not more than two (2) years after a prior violation.**

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for each violation identified in a subsequent inspection.

(C) ~~Twenty-five~~ **Seventy-five** dollars ~~(\$25)~~ **(\$75)** per instance for ~~subsequent violations~~ **a third violation** that

(i) ~~are~~ **is** identified in ~~an~~ **a** subsequent inspection. subsequent to the inspection under clause (B); and

(ii) occur not more than two (2) years after a prior violation.

(D) **One hundred dollars (\$100) per instance for a fourth or subsequent violation that:**

(i) **is identified in an inspection subsequent to the inspection under clause (C); and**

(ii) **occurs not more than two (2) years after a prior violation.**

(3) For a termination notice violation under section 11 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for each violation identified in a subsequent inspection.

(C) ~~Fifty~~ **Seventy-five** dollars ~~(\$50)~~ **(\$75)** per instance for ~~subsequent violations~~ **a third violation** that

(i) ~~are~~ **is** identified in ~~an~~ **a** subsequent inspection. subsequent to the inspection under clause (B); and

(ii) occur not more than two (2) years after a prior violation.



(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

- (i) is identified in an inspection subsequent to the inspection under clause (C); and**
- (ii) occurs not more than two (2) years after a prior violation.**

(4) For an hour violation of not more than thirty (30) minutes under section 20 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) ~~Twenty-five~~ **Fifty** dollars ~~(\$25)~~ **(\$50)** per instance for each violation identified in a subsequent inspection.

(C) ~~Twenty-five~~ **Seventy-five** dollars ~~(\$25)~~ **(\$75)** per instance for ~~subsequent violations~~ **a third violation** that

- ~~(i) are~~ **is** identified in ~~an~~ **a** subsequent inspection. subsequent to the inspection under clause (B); and
- ~~(ii) occur~~ **not more than two (2) years after a prior violation.**

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

- (i) is identified in an inspection subsequent to the inspection under clause (C); and**
- (ii) occurs not more than two (2) years after a prior violation.**

(5) For an hour violation of more than (30) minutes under section 20 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) ~~Fifty~~ **One hundred** dollars ~~(\$50)~~ **(\$100)** per instance for each violation identified in a subsequent inspection.

(C) ~~Seventy-five~~ **Two hundred** dollars ~~(\$75)~~ **(\$200)** per instance for ~~subsequent violations~~ **a third violation** that

- ~~(i) are~~ **is** identified in ~~an~~ **a** subsequent inspection. subsequent to the inspection under clause (B); and
- ~~(ii) occur~~ **not more than two (2) years after a prior violation.**

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

- (i) is identified in an inspection subsequent to the inspection under clause (C); and**
- (ii) occurs not more than two (2) years after a prior violation.**

(6) For a hazardous occupation violation under section 25 of this chapter, the following:



- (A) A warning letter for any violations identified during an initial inspection.
- (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
- (C) ~~One~~ **Two** hundred dollars (~~\$100~~) (**\$200**) per instance for ~~subsequent violations~~ **a third violation** that
- (i) ~~are~~ **is** identified in ~~an~~ **a subsequent** inspection. ~~subsequent to the inspection under clause (B); and~~
 - (ii) ~~occur not more than two (2) years after a prior violation.~~
- (D) **Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:**
- (i) **is identified in an inspection subsequent to the inspection under clause (C); and**
 - (ii) **occurs not more than two (2) years after a prior violation.**
- (7) For an age violation under section 21 or 21.5 of this chapter, the following:
- (A) A warning letter for any violations identified during an initial inspection.
- (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
- (C) ~~One~~ **Two** hundred dollars (~~\$100~~) (**\$200**) per instance for ~~subsequent violations~~ **a third violation** that
- (i) ~~are~~ **is** identified in ~~an~~ **a subsequent** inspection. ~~subsequent to the inspection under clause (B); and~~
 - (ii) ~~occur not more than two (2) years after a prior violation.~~
- (D) **Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:**
- (i) **is identified in an inspection subsequent to the inspection under clause (C); and**
 - (ii) **occurs not more than two (2) years after a prior violation.**
- (8) For each minor employed in violation of section 21(b) of this chapter, the following:
- (A) A warning letter for any violations identified during an initial inspection.
- (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
- (C) ~~One~~ **Two** hundred dollars (~~\$100~~) (**\$200**) per instance for ~~subsequent violations~~ **a third violation** that
- (i) ~~are~~ **is** identified in ~~an~~ **a subsequent** inspection. ~~subsequent to the inspection under clause (B); and~~



~~(ii) occur not more than two (2) years after a prior violation.~~
(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

- (i) is identified in an inspection subsequent to the inspection under clause (C); and**
- (ii) occurs not more than two (2) years after a prior violation.**

(b) A civil penalty assessed under subsection (a):

- (1) is subject to IC 4-21.5-3-6; and
- (2) becomes effective without a proceeding under IC 4-21.5-3 unless a person requests an administrative review not later than thirty (30) days after notice of the assessment is given.

(c) For purposes of determining whether a second violation has occurred when assessing a civil penalty under subsection (a), a first violation expires one (1) year after the date of issuance of a warning letter by the department of labor under subsection (a).

(d) For purposes of determining recurring violations of this section, each location of an employer shall be considered separate and distinct from another location of the same employer.

(e) There is established an employment of youth fund for the purpose of educating affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. **One-half (1/2) of the fund each year shall be used for the purpose of the education provision of this subsection. This portion of the fund may be used to award grants to provide educational programs. The remaining one-half (1/2) of the fund shall be used each year for the expenses of hiring and salaries of additional inspectors to enforce this chapter under section 29 of this chapter. All inspectors hired to enforce this chapter shall also be available to educate affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter.** The fund shall be administered by the department of labor. The expenses of administering the fund shall be paid from money in the fund. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a state fiscal year does not revert to the state general fund. Revenue received from civil penalties under this section shall be deposited in the employment of youth fund.

SECTION 6. IC 22-2-2-4, AS AMENDED BY SEA 40-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1,

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1999 (RETROACTIVE)]: Sec. 4. (a) Every employer employing four (4) or more employees during a work week shall:

- (1) in any work week beginning on or after July 1, 1968, in which he is subject to the provisions of this chapter, pay each of his employees wages of not less than one dollar and twenty-five cents (\$1.25) per hour;
- (2) in any work week beginning on or after July 1, 1977, in which he is subject to this chapter, pay each of his employees wages of not less than one dollar and fifty cents (\$1.50) per hour;
- (3) in any work week beginning on or after January 1, 1978, in which he is subject to this chapter, pay each of his employees wages of not less than one dollar and seventy-five cents (\$1.75) per hour; and
- (4) in any work week beginning on or after January 1, 1979, in which he is subject to this chapter, pay each of his employees wages of not less than two dollars (\$2) per hour.

(b) Except as provided in subsection (c), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on and after July 1, 1990, and before October 1, 1998, wages of not less than three dollars and thirty-five cents (\$3.35) per hour.

(c) An employer subject to subsection (b) is permitted to apply a "tip credit" in determining the amount of cash wage paid to tipped employees. In determining the wage an employer is required to pay a tipped employee, the amount paid the employee by the employee's employer shall be an amount equal to:

- (1) the cash wage paid the employee which for purposes of the determination shall be not less than the cash wage required to be paid to employees covered under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 203(m)(1)) on August 20, 1996, which amount is two dollars and thirteen cents (\$2.13) an hour; and
- (2) an additional amount on account of the tips received by the employee, which amount is equal to the difference between the wage specified in subdivision (1) and the wage in effect under subsections (b), (f), and (g).

An employer is responsible for supporting the amount of tip credit taken through reported tips by the employees.

(d) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which employees are employed, between employees on the basis of sex by

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paying to employees in such establishment a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to:

- (1) a seniority system;
- (2) a merit system;
- (3) a system which measures earnings by quantity or quality of production; or
- (4) a differential based on any other factor other than sex.

(e) An employer who is paying a wage rate differential in violation of subsection (d) shall not, in order to comply with subsection (d), reduce the wage rate of any employee, and no labor organization, or its agents, representing employees of an employer having employees subject to subsection (d) shall cause or attempt to cause such an employer to discriminate against an employee in violation of subsection (d).

(f) Except as provided in subsection (c), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after October 1, 1998, and before March 1, 1999, wages of not less than four dollars and twenty-five cents (\$4.25) per hour.

(g) Except as provided in subsections (c) and (i), every employer employing at least two (2) employees during a work week shall, in any work week in which the employer is subject to this chapter, pay each of the employees in any work week beginning on or after March 1, 1999, wages of not less than five dollars and fifteen cents (\$5.15) an hour.

(h) This section does not apply if an employee:

- (1) provides companionship services to the aged and infirm (as defined in 29 CFR 552.6); and
- (2) is employed by an employer or agency other than the family or household using the companionship services, as provided in 29 CFR 552.109 (a).

(i) This subsection applies only to an employee who has not attained the age of twenty (20) years. Instead of the rates prescribed by subsections (c), (f), and (g), an employer may pay an employee of the employer, during the first ninety (90) consecutive calendar days after the employee is initially employed by the employer, a wage which is not less than four dollars and twenty-five cents (\$4.25) per hour,



effective March 1, 1999. However, no employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in this subsection.

(j) Except as otherwise provided in this section, no employer shall employ any employee for a workweek longer than forty (40) hours unless the employee receives compensation for employment in excess of the hours above specified at a rate not less than one and one-half (1.5) times the regular rate at which he is employed.

(k) For purposes of this section the following apply:

(1) "Overtime compensation" means the compensation required by subsection (j).

(2) "Compensatory time" and "compensatory time off" mean hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.

(3) "Regular rate" means the rate at which an employee is employed is considered to include all remuneration for employment paid to, or on behalf of, the employee, but is not considered to include the following:

(A) Sums paid as gifts, payments in the nature of gifts made at Christmas time or on other special occasions, as a reward for service, the amounts of which are not measured by or dependent on hours worked, production, or efficiency.

(B) Payments made for occasional periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause, reasonable payments for traveling expenses, or other expenses, incurred by an employee in the furtherance of his employer's interests and properly reimbursable by the employer, and other similar payments to an employee which are not made as compensation for his hours of employment.

(C) Sums paid in recognition of services performed during a given period if:

(i) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect the payments regularly;

(ii) the payments are made pursuant to a bona fide profit

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sharing plan or trust or bona fide thrift or savings plan, meeting the requirements of the administrator set forth in appropriately issued regulations, having due regard among other relevant factors, to the extent to which the amounts paid to the employee are determined without regard to hours of work, production, or efficiency; or

(iii) the payments are talent fees paid to performers, including announcers, on radio and television programs.

(D) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old age, retirement, life, accident, or health insurance or similar benefits for employees.

(E) Extra compensation provided by a premium rate paid for certain hours worked by the employee in any day or workweek because those hours are hours worked in excess of eight (8) in a day or in excess of the maximum workweek applicable to the employee under subsection (j) or in excess of the employee's normal working hours or regular working hours, as the case may be.

(F) Extra compensation provided by a premium rate paid for work by the employee on Saturdays, Sundays, holidays, or regular days of rest, or on the sixth or seventh day of the workweek, where the premium rate is not less than one and one-half (1.5) times the rate established in good faith for like work performed in nonovertime hours on other days.

(G) Extra compensation provided by a premium rate paid to the employee, in pursuance of an applicable employment contract or collective bargaining agreement, for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding the maximum workweek applicable to the employee under subsection (j)) where the premium rate is not less than one and one-half (1.5) times the rate established in good faith by the contract or agreement for like work performed during the workday or workweek.

(I) No employer shall be considered to have violated subsection (j) by employing any employee for a workweek in excess of that specified in subsection (j) without paying the compensation for overtime employment prescribed therein if the employee is so employed:

(1) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide

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by the National Labor Relations Board, which provides that no employee shall be employed more than one thousand forty (1,040) hours during any period of twenty-six (26) consecutive weeks; or (2) in pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that during a specified period of fifty-two (52) consecutive weeks the employee shall be employed not more than two thousand two hundred forty (2,240) hours and shall be guaranteed not less than one thousand eight hundred forty (1,840) hours (or not less than forty-six (46) weeks at the normal number of hours worked per week, but not less than thirty (30) hours per week) and not more than two thousand eighty (2,080) hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to the employee under subsection (j) or two thousand eighty (2,080) in that period at rates not less than one and one-half (1.5) times the regular rate at which the employee is employed. or

(m) No employer shall be considered to have violated subsection (j) by employing any employee for a workweek in excess of the maximum workweek applicable to the employee under subsection (j) if the employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of the employee necessitate irregular hours of work, and the contract or agreement includes the following:

- (1) Specifies a regular rate of pay of not less than the minimum hourly rate provided in subsections (c), (f), (g), and (i) (whichever is applicable) and compensation at not less than one and one-half (1.5) times that rate for all hours worked in excess of the maximum workweek.
- (2) Provides a weekly guaranty of pay for not more than sixty hours based on the rates so specified.

(n) No employer shall be considered to have violated subsection (j) by employing any employee for a workweek in excess of the maximum workweek applicable to the employee under that subsection if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, the amount paid to the employee for the number of hours worked by him in the workweek in

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excess of the maximum workweek applicable to the employee under that subsection:

- (1) in the case of an employee employed at piece rates, is computed at piece rates not less than one and one-half (1.5) times the bona fide piece rates; applicable to the same work when performed during nonovertime hours; ~~or~~
- (2) in the case of an employee performing two (2) or more kinds of work for which different hourly or piece rates have been established, is computed at rates not less than one and one-half (1.5) times those bona fide rates; applicable to the same work when performed during nonovertime hours; or
- (3) is computed at a rate not less than one and one-half (1.5) times the rate established by the agreement or understanding as the basic rate to be used in computing overtime compensation thereunder, provided that the rate so established shall be substantially equivalent to the average hourly earnings of the employee, exclusive of overtime premiums, in the particular work over a representative period of time;

and if the employee's average hourly earnings for the workweek exclusive of payments described in this section are not less than the minimum hourly rate required by applicable law, and extra overtime compensation is properly computed and paid on other forms of additional pay required to be included in computing the regular rate.

(o) Extra compensation paid as described in this section shall be creditable toward overtime compensation payable pursuant to this section.

(p) No employer shall be considered to have violated subsection (j) by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if:

- (1) the regular rate of pay of the employee is in excess of one and one-half (1.5) times the minimum hourly rate applicable to the employee under section 2 of this chapter; and
- (2) more than half of the employee's compensation for a representative period (not less than one (1) month) represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be considered commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(q) No employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of



the sick, the aged, or the mentally ill or defective who reside on the premises shall be considered to have violated subsection (j) if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of fourteen (14) consecutive days is accepted in lieu of the workweek of seven (7) consecutive days for purposes of overtime computation and if, for his employment in excess of eight (8) hours in any workday and in excess of eighty (80) hours in that fourteen (14) day period, the employee receives compensation at a rate not less than one and one-half (1.5) times the regular rate at which the employee is employed.

(r) No employer shall employ any employee in domestic service in one (1) or more households for a workweek longer than forty (40) hours unless the employee receives compensation for that employment in accordance with subsection (j).

(s) In the case of an employee of an employer engaged in the business of operating a street, suburban or interurban electric railway, or local trolley or motorbus carrier (regardless of whether or not the railway or carrier is public or private or operated for profit or not for profit), in determining the hours of employment of such an employee to which the rate prescribed by subsection (j) applies there shall be excluded the hours the employee was employed in charter activities by the employer if both of the following apply:

- (1) The employee's employment in the charter activities was pursuant to an agreement or understanding with the employer arrived at before engaging in that employment.
- (2) If employment in the charter activities is not part of the employee's regular employment.

(t) Any employer may employ any employee for a period or periods of not more than ten (10) hours in the aggregate in any workweek in excess of the maximum workweek specified in subsection (j) without paying the compensation for overtime employment prescribed in subsection (j), if during that period or periods the employee is receiving remedial education that:

- (1) is provided to employees who lack a high school diploma or educational attainment at the eighth grade level;
- (2) is designed to provide reading and other basic skills at an eighth grade level or below; and
- (3) does not include job specific training.

(u) Subsection (j) does not apply to an employee of a motion picture theater.

(v) Subsection (j) does not apply to an employee of a seasonal



amusement or recreational establishment, an organized camp, or a religious or nonprofit educational conference center that is exempt under the federal Fair Labor Standards Act of 1938, as amended (29 U.S.C. 213).

SECTION 7. An emergency is declared for this act.

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